



Comptroller General  
of the United States

Washington, D.C. 20548

238177

## Decision

**Matter of:** Cormier Textile Products, Inc.--  
Reconsideration

**File:** B-259814.2

**Date:** July 18, 1995

### DECISION

Cormier Textile Products, Inc. requests reconsideration of our April 17 dismissal of its protest of the award of a contract to Protective Plastics, Inc. (PPI), under request for proposals (RFP) No. 95-P-002, issued by the Office of Foreign Disaster Assistance (OFDA), Agency for International Development, for 3,254 rolls of plastic sheeting to be used in disaster and refugee situations.

We deny the request.

In its protest, Cormier claimed that OFDA misevaluated the proposal of, and improperly awarded a contract to, PPI. The RFP contained the following provision:

"Award will be made on the bas[i]s of price, ability of contractor to perform tasks as specified, and on the quality of the product and ability of contractor to meet OFDA specifications for product. After award is made and first delivery of 200 rolls received at OFDA Stockpile, OFDA will select a random sample from the first delivery/first production run. Selected article will be subject to testing of compliance with OFDA product specifications by an independent laboratory. Should selected article fail testing in part or in whole, OFDA may rescind award from contractor. OFDA will have option of rejecting entire lot or of purchasing initial lot only. OFDA may then award contract to next lowest bidder and first article will be required from second contractor, subject to same testing procedure as above."

Cormier claimed that the provision required contracting officials to evaluate PPI's offer as to the "quality of the product," and the firm's ability "to perform tasks as specified," and "to meet OFDA specifications for [the] product." Cormier claimed that the evaluation was flawed because PPI's offer was evaluated only as to price.

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We dismissed Cormier's protest on the basis that the pertinent RFP provision, read as a whole, did not provide for other than a price evaluation; it was clear that compliance of the product was to be determined only after contract award. The provision set forth a detailed explanation of the steps the agency intended to take after award to assure that the contractor's product met the specifications, and the steps it would take--recision of the contract and award to the next-low offeror--in the event the awardee's product was found noncompliant. In contrast, there was no explanation of how quality would be judged prior to award, and since offerors were offering to supply a product in accordance with a detailed specification and no sample was required prior to award, we found no basis for Cormier's urged interpretation. We found instead that the offeror's ability "to perform tasks as specified" and "to meet OFDA specifications for [the] product" related to the offeror's responsibility, that is, the offeror's ability to perform satisfactorily should it receive the contract. Cormier challenged PPI's responsibility based on PPI's alleged failure to furnish acceptable sheeting under a prior contract, but we dismissed that protest basis because the determination of a firm's responsibility is a matter within the discretion of the contracting officer that we generally will not review. See 4 C.F.R. § 21.3(m)(5) (1995).<sup>1</sup>

In its request for reconsideration, Cormier maintains that we "misunderstood" its protest, that we must have failed to review documents it requested from OFDA, and that we failed to adequately consider the issues it raised. Generally, Cormier restates its argument that (1) the RFP provision in question established evaluation factors as to quality of the product and conformity to specifications; (2) OFDA erred in failing to evaluate PPI's offer as to those factors and evaluating PPI's offer only as to price; and (3) OFDA erred in its affirmative responsibility determination. As it did in its comments on the agency report in the original protest, Cormier also argues that OFDA contracting officials have acted in bad faith in numerous ways, favoring PPI as a preferred supplier; Cormier maintains that we erred in not reviewing the bad faith claims it alleged.


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<sup>1</sup>We will review an affirmative determination of responsibility where there is a showing of possible agency fraud or bad faith. Cormier raised allegations of bad faith in its comments to the agency report and supplemental submissions. However, protest grounds raised for the first time in comments on the agency report are untimely where their basis was known to the protester at the time of initial filing, as in this case, and so those arguments were not considered. See Spire Corp., B-258267, Dec. 21, 1994, 94-2 CPD ¶ 257.

In order to obtain reconsideration, our Regulations require that the requesting party show that our prior decision contains errors of fact or law, or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). Neither repetition of arguments made during our consideration of the original protest nor mere disagreement with our decision meets this standard. Lovelace Scientific Resources, Inc.--Recon., B-256315.2, Nov. 25, 1994, 94-2 CPD ¶ 209.

As is evident from a comparison of the reconsideration arguments with those raised in Cormier's protest, Cormier's reconsideration essentially restates its arguments and disagrees with our decision. As discussed above, we specifically addressed each of the three enumerated arguments and the information and arguments related to them. We did not address Cormier's bad faith arguments since, as discussed, they were untimely raised. For the same reason, we will not now consider those arguments. Although Cormier states that its request contains "new discoveries," we see no new arguments or information. Thus, there is no basis for reconsidering the matter.

The request for reconsideration is denied.

  
Ronald Berger  
Associate General Counsel